

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

**STATUS REPORT OF THE CITY REGARDING  
DISCOVERY AND TRIAL ISSUES**

The City files this status report in advance of the status conference scheduled for June 26, 2014, to address the status of the following issues: (i) the City's document production; (ii) parties' compliance with the Deposition Protocol and the Deposition Protocol Order; (iii) the City's responses to Objectors' Rule 30(b)(6) notices and interrogatories; and (iv) the number of DWSD-related witnesses.

**I. DOCUMENT PRODUCTION**

The City completed its document production by the June 20, 2014 deadline set by the Court's Fifth Amended Order Establishing Procedures, Deadlines and Hearing Dates Relating to the Debtor's Plan of Adjustment. The

City's full document production, which was made on a rolling basis from May 15, 2014 through June 20, 2014, comprised 67,510 documents, with a total of 705,416 pages. Accordingly, the City has complied with its document production obligations under the applicable rules and this Court's order.

## II. THE DEPOSITION PROTOCOL

As stated by the Objectors in their earlier Statement Addressing Certain Discovery and Trial Issues, Docket No. 5246, the City and the Objectors agreed to divide City and non-party witnesses into three bands, with Band 1 witnesses – “common core” City witnesses who are expected to offer substantial relevant testimony to all or most objector constituencies – to “be deposed *at the outset of the deposition period.*” *Id.* at ¶ 3 (emphasis added).<sup>1</sup>

The City, in accordance with the Deposition Protocol, informed Objectors that Kevyn Orr, a non-expert Band 1 witness,<sup>2</sup> would be made available “at the outset of the deposition period” on June 25 and 27, 2014. The Objectors responded that they now had decided that Mr. Orr's deposition would be one of the

---

<sup>1</sup> Indeed, not only did the Objectors agree that Band 1 witnesses would be deposed at the beginning of the deposition period, but they originally requested that depositions of Band 2 witnesses should commence only *after* the completion of all Band 1 depositions. *Id.* ¶ 4.

<sup>2</sup> To streamline the scheduling of depositions, the City, on June 23, 2014, identified to the Objectors which Band 1 witnesses the City intends to qualify as experts, so that their depositions could be scheduled to take place after the July 8 deadline to serve expert reports.

most important in the case and insisted that his deposition instead should take place at the *end* of the deposition period, on July 21-22.

The Objectors insist that this is necessary, in large part, because Mr. Orr has been designated by the City to testify as to many of the Objectors' Rule 30(b)(6) topics. However, as the Court noted in its Deposition Protocol Order, "[t]he Band 1 concept is predicated on the assumption that the 'common core' witnesses collectively will, in fact, be designated and appropriately prepared to address a substantial portion of the 30(b)(6) topics." Docket No. 5263 at 1. The fact that Mr. Orr is a Rule 30(b)(6) designee does not make him any different from the other Band 1 witnesses who are also designees, and who the Objectors and the City agreed should be deposed "at the outset."

The City continues to believe that Band 1 witness depositions should proceed as quickly as possible and has offered to produce Mr. Orr on July 9-10.

### **III. THE CITY'S RESPONSES TO OBJECTORS' RULE 30(b)(6) NOTICES AND INTERROGATORIES**

The City has identified witnesses for all but one of the 123 Rule 30(b)(6) deposition topics requested by Syncora, Oakland County, and the DWSD Discovery Parties. Specifically, the DWSD Discovery Parties have requested that the City produce Rule 30(b)(6) representatives to testify regarding 54 separate topics, including subparts. Oakland County has requested Rule 30(b)(6) testimony on 19 topics, including subparts, after withdrawing two of its original topics; and

Syncora, 50 topics, after withdrawing two topics. The City has identified witnesses to testify with respect to every topic and sub-topic identified in the Rule 30(b)(6) notices, with the exception of one topic identified by Syncora, which is subject to a pending motion for a protective order.

The City has also provided answers – and at times supplemented its answers – to 261 interrogatories<sup>3</sup> submitted by the Objectors.

#### **IV. DWSD WITNESSES**

By the City's count, Wayne County, Oakland County and Macomb County (collectively, the "Counties") have identified 19 witnesses unique to the Counties,<sup>4</sup> including 10 new witnesses that were added when the Counties filed their amended witness lists on June 20. The Counties' witnesses constitute nearly one-third of all of the witnesses identified. To put this number in context, the City itself has named only 12 unique witnesses; FGIC has identified 8; Syncora, 6; and EEPK, 3.

It appears that all but one of the Counties' 19 witnesses will be called to testify regarding DWSD matters. In addition, NPFG has identified DWSD-related witnesses such as "[a]ll 'capital market participants,' as described in the City's Fourth Amended Disclosure Statement [Docket No. 4391 at 63], who had

---

<sup>3</sup> Including sub-parts.

<sup>4</sup> *I.e.*, witnesses not identified by any other party.

discussions with the City about the DWSD.” *See* Docket No. 5500. This category likely encompasses at least two more DWSD witnesses. In light of the significant costs to the City of preparing for and participating in 20 or more DWSD depositions, the City respectfully suggests that the Court consider limiting the DWSD witnesses to a more reasonable number.

Dated: June 25, 2014

Respectfully submitted,

/s/ Deborah Kovsky-Apap  
Robert S. Hertzberg (P30261)  
Deborah Kovsky-Apap (P68258)  
PEPPER HAMILTON LLP  
4000 Town Center, Suite 1800  
Southfield, MI 48075  
Telephone: (248) 359-7300  
Fax: (248) 359-7700  
hertzbergr@pepperlaw.com  
kovskyd@pepperlaw.com

- and -

Thomas F. Cullen, Jr.  
Gregory M. Shumaker  
Geoffrey S. Stewart  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001.2113  
Telephone: (202) 879-3939  
Facsimile: (202) 626-1700

**ATTORNEYS FOR THE CITY OF  
DETROIT**